

NOT FOR PUBLICATION

DFF
GJM

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GAETANO DI GIROLAMO, SR.,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM & ORDER

97-CV-2170(ERK)

FILED

**IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
SEP 19, 2005**

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Korman, Ch. J.

**P.M. _____
TIME A.M. _____**

On February 24, 2005, I entered an order treating petitioner's previously filed Rule 59 motion as abandoned by petitioner's conduct. On May 10, 2005, petitioner filed a memorandum in support of reconsideration of the forgoing order and for other relief under F.Civ.P., Rule 60(b).

I grant the motion for reconsideration. On reconsideration, I deny petitioner's Rule 59 motion on the ground that the motion is without merit. While a compelling argument could be made for adhering to holding that the Rule 59 motion should be deemed to have been abandoned, in the end I am persuaded that petitioner should not be prejudiced because of the manner in which his attorney has litigated the motion.

I deny petitioner a certificate of appealability. The Court of Appeals has already denied a certificate of appealability to petitioner's co-defendant, who raised the same principal ground for relief as that asserted by petitioner. I addressed this issue in a memorandum denying the petition of both defendants on February 24, 2005. The denial of the certificate is reflected in an order dated November 29, 2000. Second Circuit Docket #

00-2152 (November 29, 2000). The other grounds raised by petitioner are not sufficient to justify a certificate of appealability.

SO ORDERED:

Brooklyn, New York
September 16, 2005

s/Edward R. Korman
Edward R. Korman
United States Chief District Judge